

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation Provisions of the)	
Telecommunications Act of 1996)	
)	OMB Control No. 3060-
)	1046

**PAPERWORK REDUCTION ACT COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby urges the Office of Management and Budget (“OMB”) to exercise its authority under the Paperwork Reduction Act¹ to disapprove for small and midsize carriers certain of the information collections adopted in the September 30, 2003 Order in the above-referenced proceeding.²

I. INTRODUCTION AND BACKGROUND

On September 30, 2003, the FCC adopted payphone compensation regulations that place the liability for compensating payphone service providers (“PSPs”) on the facilities-based interexchange carrier (“IXC”) that completes the call on a switch that it owns or leases.³ This facilities-based IXC is also known as the switched-based reseller or the SBR. The Order

¹ 44 U.S.C. § 3504(c).

² *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, FCC 03-235, Report and Order (rel. Oct. 3, 2003) (“Order”).

³ *Id.*

also appears to impose SBR obligations on local exchange carriers (“LECs”) that complete local payphone calls on switches that they own or lease.⁴

On March 4, 2004, the FCC issued a Federal Register notice seeking comment on the information collections adopted in the Order.⁵ Specifically, the Notice seeks comment on the information collections that require (1) each SBR to establish and maintain an accurate call tracking system and conduct a third party audit of that system for accuracy, (2) each SBR to provide quarterly reports to each PSP containing the SBR’s compensation data and additional support, and (3) each intermediate IXC that switches payphone calls to other IXCs to provide each PSP with quarterly reports that include a list of all the facilities-based long distance carriers to which the intermediate carrier switched toll-free and access code calls dialed from each of the

⁴ *Id.* at n.1. Apart from a reference in footnote 1, the Order makes no further explicit reference to the SBR responsibilities imposed on LECs. This fact raises a legitimate question as to whether the information collection burdens apply to LECs at all. At least one waiver petition has been filed with the FCC on a related matter in an attempt to clarify the question of whether specific payphone compensation rules should apply to small LECs. *See, e.g.*, Joint Petition for Waiver of Sections 64.1301(a), (d), and (e) filed by Bluffton Telephone Company, Inc., Chesnee Telephone Company, Inc., Chester Telephone Company, Farmers Telephone Cooperative, Inc., Fort Mill Telephone Company, d/b/a Comporium Communications, Hargray Telephone Company, Inc., Home Telephone Company, Inc., Horry Telephone Cooperative, Inc., Lancaster Telephone Company d/b/a Comporium Communications, Lockhart Telephone Company, Inc., McClellanville Telephone Company, Norway Telephone Company, St. Stephen Telephone Company, Palmetto Rural Telephone Cooperative, Inc., PBT Telecom, Inc., Piedmont Rural Telephone Cooperative, Inc., Ridgeway Telephone Company, Inc., Rock Hill Telephone Company, d/b/a Comporium Communications, Sandhill Telephone Cooperative, Inc., West Carolina Rural Telephone Cooperative, Inc. and Williston Telephone Company in CC Docket No. 96-128 (filed Nov. 26, 2003) (requesting waiver of rules requiring ILECs to pay default compensation to PSPs). To date, however, the FCC has not responded to the Joint Petition. Imposing burdensome information collections on LECs should be rejected.

⁵ Federal Communications Commission, Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, 69 Fed. Reg. 12328 (Mar. 16, 2004) (“Notice”).

PSP's payphones.⁶ The Notice requests that commenters address whether the information collections are necessary and will have practical utility, the accuracy of the FCC's burden estimate, methods for enhancing the quality of the information sought, and ways to minimize the burden on respondents.⁷

The FCC claims that its new rules will not have an adverse impact on small carriers.⁸ ITTA disagrees with this statement. Although the Order may in theory permit SBRs and PSPs to negotiate mechanisms for payment other than those set forth in the FCC's rules and to rely upon the IXC to track data and to compensate the PSP directly in exchange for SBR payment for all calls,⁹ the FCC's rules nevertheless appear to require SBRs to undertake a payphone call tracking system audit even if the SBR has negotiated an alternate arrangement with the PSP for the tracking system itself.¹⁰ Given the actual language of Section 64.1320 of the FCC's rules, there appears to be nothing optional about the third party audit nor is it waivable by the SBR. Furthermore, the Order does not address how such an arrangement (that allows the SBR to rely upon the IXC for tracking data) would operate in the context of local payphone-originated calls, where there is no IXC in the call path. Moreover, any suggestion that SBRs could negotiate around the audit requirement necessarily assumes that each SBR will be able to reach acceptable agreements with all the PSPs in their service territory. The reality is that in many instances the SBR and the PSP may not be able to reach agreement on how to track payphone-originated calls that terminate to the LEC because the Order gives the PSP little

⁶ *Id.* at 12329.

⁷ *Id.* at 12328.

⁸ Order at ¶75.

⁹ 47 C.F.R. § 64.1310(a).

¹⁰ *See* 47 C.F.R. § 64.1320.

incentive to make any concessions of this kind. To the extent that an SBR is unable to reach agreement with a PSP, the information collections adopted in the Order will apply to the SBR. Many of the new auditing, reporting, and compensatory requirements will place significant financial burdens on both small and midsize carriers that have SBR obligations. Of particular note to the Independent Telephone & Telecommunications Alliance (“ITTA”) are the burdens associated with the new requirements that an SBR (1) conduct a third party audit verifying the accuracy of its tracking system, (2) obtain the consent of each PSP compensated by the SBR to negotiate an alternative payment and tracking arrangement with the underlying IXC, and (3) provide a sworn statement from the company’s corporate financial officer (“CFO”) certifying the accuracy of the SBR’s quarterly payments to the PSP. ITTA requests that OMB disapprove these three specific information collections mandated by the Order.¹¹

ITTA is an organization of midsize incumbent LECs that collectively serve over ten million access lines in over 40 states and offer a diversified range of services to their customers. Most ITTA member companies qualify as rural telephone companies within the meaning of Section 3(37) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 153(37).

Each ITTA member company is faced with complying with not one, but two sets of information collection burdens mandated by the Order. First, in their capacity as LECs terminating payphone-originated calls, ITTA member companies appear to have SBR duties for local calls.¹² Second, ITTA member companies also provide interexchange services, making them the SBR for payphone-originated long distance calls. The new obligations placed on SBRs

¹¹ The Notice fails to even reference the burdens associated with the last two of the aforementioned information collections even though the Order clearly imposes them.

¹² See Order at n.1.

are costly and burdensome for small to midsize carriers which do not have the resources of the Bell Operating Companies or the largest IXC's. As described below, the goal of the underlying information collections can be achieved through less costly means. Accordingly, ITTA respectfully requests that OMB disapprove for small and midsize carriers the FCC's information collections adopted in the Order.

II. DISCUSSION

A. A Third Party Audit of the SBR's Tracking System is Costly and Unnecessary to Achieve the Order's Goals.

The principal goal of the Order is to ensure that PSPs are fairly compensated by providing PSPs with sufficient information to identify the SBR responsible for payment and to track calls to completion. The SBR's tracking system combined with the requirement that intermediate carriers in the call path report to the PSP the volume of calls the intermediate carrier received achieves the FCC's goal of ensuring that PSPs are able to identify the SBR responsible for compensating them. As discussed above, these requirements cannot effectively be negotiated away. ITTA does not request herein that OMB disapprove the requirement that SBRs establish call tracking systems. ITTA merely requests that OMB disapprove the costly and unnecessary third party audit required under the rules. The requirement that an SBR conduct a third party audit simply to verify the accuracy of the tracking system is unnecessarily duplicative of the FCC's other reporting requirements and can be achieved through less costly means.

1. Local Exchange Affiliate Audit Costs

As an initial matter, ITTA takes issue with the FCC's classification of the total annual cost estimates of the information collections as being "not applicable."¹³ To the contrary, the annual costs of complying with the FCC's information collection rules are not insignificant.

¹³ Notice at 12329.

For example, as the attached affidavits demonstrate, the cost of an initial audit of a LEC's call tracking system alone can range between \$20,000 and \$50,000. These figures do not include the additional considerable amount of time carriers will spend gathering relevant information and conferring with the auditor.

2. Interexchange Affiliate Audit Costs

ITTA member companies' facilities-based long distance affiliates expect the expense of the initial audit of their call tracking systems to be even higher. For example, the long distance affiliate of one of ITTA's larger members estimates the cost of an initial audit of its own call tracking system to be approximately \$80,000. Because the carrier has opted to contract with a clearinghouse to pay the PSPs based on the carrier's tracking data, the FCC's rules require the carrier to conduct an audit of the clearinghouse's processes as well. The carrier estimates that the second audit will cost an additional \$20,000, resulting in a total of \$100,000 for the first year alone. A second example involved the interexchange affiliate of one of ITTA's smaller members which received a quote from an independent auditor of \$35,000 - \$45,000, not an insignificant amount for a smaller midsize carrier.

3. Combined Local Exchange and Interexchange Affiliate Audit Costs

In a further example, an auditor recently quoted another ITTA member company a cost estimate of \$140,000 to \$160,000 for the initial audit of its call tracking system. The quote included the combined cost of auditing the tracking systems for the four LECs and one IXC that the company operates. The auditor explained that the quote could be attributed to the number of different billing systems the company employs and the relatively higher standard imposed by the FCC for performing these types of audits (i.e., attestation guidelines). Again, these are costs over and above the costs of simply complying with the rules -- i.e., the cost of establishing a call tracking system -- which ITTA does not challenge herein.

The burden of just this one information collection (on LEC affiliates as SBRs and on IXC affiliates as SBRs) would be disproportionate to the revenues a midsize carrier would be likely to receive for providing the underlying service. For example, the interexchange affiliate of one ITTA member company estimates that the revenues generated from providing payphone-related services to three IXCs ranges from approximately \$2,400 to \$4,500 each month. The same member company has estimated the revenues generated by its LECs in providing these same services to be essentially zero. Of course, these revenue streams pale in comparison to the operational costs of actually providing these services, let alone the additional regulatory costs the Order would impose. For example, an ITTA member company estimates the internal costs of complying with the Order (including the internal audit, external verification, and other requirements) to be \$57,000 annually compared to total annual revenues of \$26,000 likely to be generated from providing the service. The only economically rational response to such cost burdens would be to discontinue providing the service in the first instance, a result that would, of course, fail to satisfy any of the goals of this proceeding. OMB should not allow the imposition of this type of information collection burden on small and midsize carriers. Rather, a statement from the appropriate corporate officer responsible for providing the service certifying to the accuracy of the tracking system would achieve the FCC's goal of ensuring that carriers establish reliable tracking systems and is far less costly than a third party audit.

In addition to requiring such a legally binding certification, there are other remedies available to PSPs that believe an SBR's tracking system is inaccurate or unreliable. For example, the PSP may file a complaint at the FCC against the carrier for damages if the PSP can demonstrate that the carrier failed to establish a reliable tracking system. The FCC also retains statutory authority to initiate an investigation and issue a forfeiture against the carrier for

such violations. These mechanisms combined with the FCC's other reporting requirements and enforcement powers are more than sufficient to ensure that SBRs accurately track payphone calls completed on their platforms.

B. Obtaining the Consent of Each PSP to Negotiate Alternative Payment and Tracking Arrangements with the Underlying IXC is Unduly Burdensome.

Under the FCC's rules, if an SBR does not wish to establish its own tracking system, it may enter into private arrangements with other companies to perform those tasks. As contemplated by the rules, some ITTA member companies have begun negotiating agreements with the four major IXCs for alternative payment and tracking arrangements. Under these agreements, the SBR will rely on the IXC to track the data and to compensate the PSP directly in exchange for the SBR's payment of all calls that pass the SBR's platform, including uncompleted calls. Although the rules clearly permit an SBR to negotiate an alternative method for payment and tracking of data, each PSP compensated must consent to this arrangement.¹⁴

ITTA's request that OMB disapprove this information collection is consistent with AT&T's petition for reconsideration of this requirement.¹⁵ As AT&T noted, in those cases where an SBR enters into an arrangement and the IXC agrees to pay the PSP on behalf of the SBR, the PSP typically is compensated on 100% of all calls.¹⁶ Hence, the requirement that the PSP consent to the arrangement is unnecessary because the PSP is fairly and fully compensated for calls made from their payphones. Most notably, the requirement that SBRs obtain the consent of over 5,500 PSPs is unreasonably burdensome for small and midsize carriers,

¹⁴ Order at ¶38.

¹⁵ AT&T Petition for Clarification or, in the Alternative, Reconsideration, filed on Dec. 8, 2003 in CC Docket No. 96-128.

¹⁶ *Id.* at 4-6.

particularly where the PSP is fully compensated for *all* calls, including uncompleted calls. ITTA strongly urges OMB to disapprove this superfluous requirement and costly financial burdens on small and midsize carriers.

C. Requiring the CFO to Certify to the Accuracy of Quarterly Payments is Burdensome.

Finally, the FCC's rules require that the SBR's CFO submit quarterly to each PSP the SBR compensates a sworn statement that payment for that quarter is accurate and based on 100% of all completed calls originating from that PSP's payphones. As Sprint argued in its petition for reconsideration, it is more appropriate and efficient for a corporate officer responsible for payphone compensation systems to sign such quarterly certifications.¹⁷ ITTA urges OMB to appropriately reduce the burden of this information collection on small and midsize carriers in the manner that Sprint recommends.

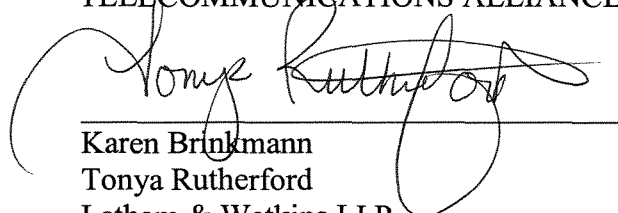
III. CONCLUSION

In conclusion, ITTA urges OMB to take note of the special needs of small and midsize carriers by eliminating the burdensome information collections adopted in the Order. ITTA strongly opposes the financially burdensome requirement that SBRs conduct a third party audit of their tracking systems and those of the entities with which they contract. Rather, ITTA maintains that it is sufficient for a corporate officer responsible for payphone compensation systems to certify regarding the accuracy of the tracking system. ITTA also opposes the requirement that PSPs consent to alternative payment and tracking arrangements negotiated between the SBR and an IXC. Finally, ITTA supports Sprint's recommendation that a corporate officer responsible for payphone compensation systems -- not the CFO -- certify that the SBR's

¹⁷ Sprint Corporation's Petition for Reconsideration, filed on Dec. 8, 2003 in CC Docket No. 96-128.

quarterly payment to the PSP is accurate and based on 100% of all completed calls originating from that PSP's payphones. The elimination of the abovementioned information collections will serve the public interest by ensuring that PSPs are fairly compensated without unduly burdening small and midsize carriers.

Respectfully submitted,
THE INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE

A handwritten signature in black ink, appearing to read "Tonya Rutherford", is written over a horizontal line.

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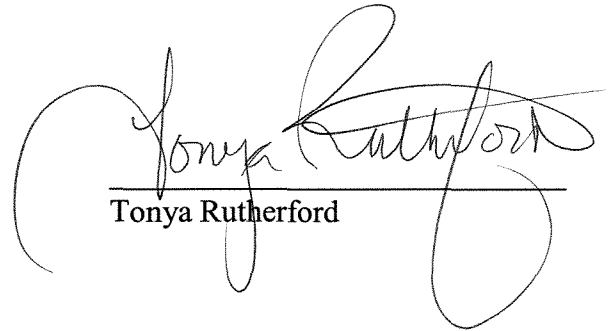
April 15, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent electronically or faxed on this 15th day of April 2004 to the following:

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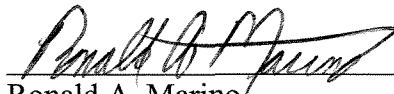


Tonya Rutherford

AFFIDAVIT OF Ronald A. Marino

I, Ronald A. Marino, do hereby declare and state under penalty of perjury the following:

1. I am the Vice President - Finance for CT Communications, Inc.
2. CT Communications, Inc. has been provided a cost estimate for an initial audit by an independent third-party auditor of our call tracking system, as prescribed in FCC 03-235 which was released on October 3, 2003, to be approximately \$20,000-50,000. As with any third-party audit, in addition to this external expense, CT Communications, Inc. would also be required to spend considerable time gathering information and otherwise working with the auditors.
3. CT Communications, Inc. estimates that in addition to the requirement for employees to spend time with the third-party auditors during the initial audit, it will likely spend an additional 90-100 hours each year complying with the information collections proposed in FCC 03-235.
4. I have reviewed the foregoing letter, and to the best of my knowledge, information, and belief, it is well grounded in fact.



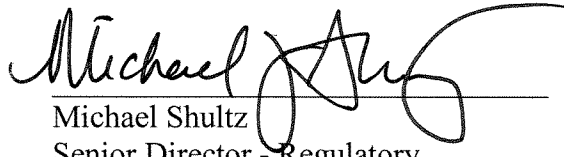
Ronald A. Marino
Vice President - Finance
CT Communications, Inc.

April 6, 2004

AFFIDAVIT OF Michael Shultz

I, Michael Shultz, do hereby declare and state under penalty of perjury the following:

1. I am Senior Director - Regulatory for TXU Communications Telecom Services (TXU Communications).
2. TXU Communications estimates the cost of an initial audit of its call tracking system, as prescribed in FCC 03-235, which was released on October 3, 2003, to be approximately \$20,000.
3. TXU Communications estimates that it will spend 150 hours each year complying with the information collections proposed in FCC 03-235.
4. I have reviewed the foregoing letter, and to the best of my knowledge, information, and belief, it is well grounded in fact.



Michael Shultz
Senior Director - Regulatory
TXU Communications

April 5, 2004

AFFIDAVIT OF DEBBIE GAINOR

I, Debbie Gainor, do hereby declare and state under penalty of perjury the following:

1. I am the Long Distance Director for CenturyTel Long Distance.
2. CenturyTel Long Distance estimates the cost of an initial audit of its call tracking system, as prescribed in FCC 03-235 which was released on October 3, 2003, to be approximately \$80,000. CenturyTel Long Distance will then have to pay for a second audit, of the clearinghouse's processes. This audit will cost approximately \$20,000. These figures do not include internal labor costs of the Long Distance Director, In-House Counsel, and Regulatory Personnel.
3. I have reviewed the foregoing information, and to the best of my knowledge, information, and belief, it is well grounded in fact.



**Debbie Gainor
Long Distance Director
CenturyTel Long Distance**

Sworn and subscribed to before me, the undersigned Notary Public, this 6th day of April, 2004.

 4-6-04

Debra Strittmater